

**AUG 1 1983**

PER L. STEVAS.  
CLERK

IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1982

AMERICAN TELEPHONE AND TELEGRAPH COMPANY, WEST-  
ERN ELECTRIC COMPANY, INC., BELL TELEPHONE LAB-  
ORATORIES, INC., NEW YORK TELEPHONE COMPANY,  
INC., NEW JERSEY BELL TELEPHONE COMPANY, SOUTH-  
ERN BELL TELEPHONE AND TELEGRAPH COMPANY, THE  
OHIO BELL TELEPHONE COMPANY, SOUTHWESTERN BELL  
TELEPHONE COMPANY, THE PACIFIC TELEPHONE AND  
TELEGRAPH COMPANY, and PACIFIC NORTHWEST BELL  
TELEPHONE COMPANY,

*Petitioners,*

v.

LITTON SYSTEMS, INC., LITTON BUSINESS TELEPHONE SYS-  
TEMS, INC., LITTON BUSINESS SYSTEMS, INC., and LIT-  
TON INDUSTRIES CREDIT CORPORATION,

*Respondents.*

On Petition for a Writ of Certiorari to the  
United States Court of Appeals for the  
Second Circuit

MEMORANDUM IN OPPOSITION TO MOTION FOR  
LEAVE TO FILE BRIEF AMICUS CURIAE ON BEHALF  
OF THE NATIONAL ASSOCIATION OF REGULATORY  
UTILITY COMMISSIONERS IN SUPPORT OF PETITION  
FOR WRIT OF CERTIORARI

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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1982

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No. 82-2128

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AMERICAN TELEPHONE AND TELEGRAPH COMPANY, WESTERN ELECTRIC COMPANY, INC., BELL TELEPHONE LABORATORIES, INC., NEW YORK TELEPHONE COMPANY, INC., NEW JERSEY BELL TELEPHONE COMPANY, SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY, THE OHIO BELL TELEPHONE COMPANY, SOUTHWESTERN BELL TELEPHONE COMPANY, THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY, and PACIFIC NORTHWEST BELL TELEPHONE COMPANY,

*Petitioners,*

v.

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*Respondents.*

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On Petition for a Writ of Certiorari to the  
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**MEMORANDUM IN OPPOSITION TO MOTION FOR  
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Respondents ("Litton") oppose the Motion for Leave to File Brief Amicus Curiae which has been made by the National Association of Regulatory Utility Commissioners

("NARUC"). Ordinarily, Litton would not oppose a motion for leave to file an amicus curiae brief by an interested party and would consent to such filing even where it disagreed with the views expressed therein. Here, however, the Motion is based on plain errors of fact. Accordingly, Litton cannot consent to the Motion and is impelled to point out the errors therein to this Court.

NARUC asserts two reasons for granting the Motion: First, if the petition herein is not granted, the local Bell operating companies "will be liable" for a portion of the judgment under the contingent liability provision of the AT&T divestiture plan in the Government case (Motion at iii); and second, this "amount will, either directly or indirectly, ultimately be recovered from the Operating Company's local ratepayers." *Id.* Both propositions are palpably wrong.

First, the contingent liability provision of the divestiture plan does not become effective until January 1, 1984. Thus, if this Court denies AT&T's petition at the beginning of the October 1983 term, AT&T will be obligated to pay the judgment and the contingent liability provision of the divestiture plan will not apply.

Second, if AT&T, as the controlling parent, should make any of its subsidiary operating companies pay any part of the judgment, the state regulatory agencies have full authority to disallow such payment from being passed on to the ratepayers.<sup>1</sup> The regulatory agencies

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<sup>1</sup> The trial court specifically ruled on this point in an order dated October 1, 1981: "Any attempt by defendants [AT&T] to pass along to their customers the costs of this action, including the damages awarded against them, is a matter for consideration, at least in the first instance, by the various regulatory agencies responsible for approval of defendants' rate structures." *Litton Sys. v. AT&T Co.*, 76 Civ. 2512 (WCC) (S.D.N.Y. Oct. 1, 1981) (Order denying Litton's request for equitable relief).

Before entry of this order, AT&T admitted this was the case when it argued: "The regulatory commissions have the exclusive

could instead require that such payment be made from equity or net profit of the Operating Company and not be included in the rate base. In any event, payment of the judgment here would represent only two percent of AT&T's net profits.<sup>2</sup> Finally, AT&T's petition raises no issue of who is to pay the judgment.

The amicus brief itself, while short, is misinformative both in expressing views regarding AT&T's "intentions" and in the application of the *Noerr-Pennington* doctrine to the facts of this case. NARUC is in no position to tell this Court what AT&T "truly sought" or what its "reasonable expectation" was or that there is "no evidence that AT&T's conduct was intended to injure Litton directly. . . ." Amicus Brief at 4. The jury found, based upon overwhelming evidence presented in a five-month trial, that AT&T wilfully maintained its monopoly of the terminal equipment market through various predatory and anticompetitive practices, and that determination was sustained by the trial court and the Second Circuit. Brief for the Respondents in Opposition at 10-15. Based on a thorough review of the trial record, the Second Circuit found the evidence "sufficient, both in terms of its weight and from the standpoint of causation." Pet. App. 6a-7a. NARUC was not involved in the trial, and it did not even attend it. Its Motion and Brief evidence no familiarity at all with the more than 18,000 pages of trial transcript and the 945 trial ex-

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jurisdiction to determine what expenses are allowable for rate making purposes, and if this award is not reversed it is the commissions that are empowered to determine the extent to which defendants are entitled to recover through the rate structure the amount of the judgment and other expenses of this case." Defendants' Memorandum In Opposition to Plaintiffs' Request for Equitable Relief (Sept. 11, 1981) at 11.

<sup>2</sup> AT&T profits after taxes last year were \$7.2 billion. Under the judgment in this case, AT&T's after-tax liability would be approximately half the amount of the judgment, which is only two percent of its total after-tax profits last year.

hibits. With no knowledge of the trial record and an argument that only summarizes AT&T's position, NARUC has nothing to contribute with respect to the disposition of AT&T's petition.

For these reasons, we submit that NARUC's Motion for Leave to File Brief Amicus Curiae should be denied.

Respectfully submitted,

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